Filed 3/22/19 In re Ivy G. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re IVY G., a Person Coming Under the Juvenile Court Law.	B290345
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JONATHAN G. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. 18CCJP01783)

APPEAL from orders of the Superior Court of Los Angeles County. Kim L. Nguyen, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant Jonathan G.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant Jessica P.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Stephanie Jo Regan, Deputy County Counsel, for Defendant and Respondent.

Jessica P. (mother) and Jonathan G. (father) appeal the order adjudicating their daughter, Ivy. G., a person described by Welfare and Institutions Code section 300, subdivision (b).[1] Father also challenges the dispositional order removing the child from his custody and placing her with mother. The parents contend the orders were not supported by substantial evidence. While this matter was pending on appeal, dependency jurisdiction was terminated with a juvenile court custody order awarding the parents joint legal custody and giving mother physical custody and father monitored visitation. In light of this resolution, we dismiss mother's appeal as moot. We conclude substantial evidence supports the orders as to father, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Ivy is Discovered With Both Parents Under the Influence of Marijuana*

Ivy was born in September 2014. The family came to the attention of the Department of Children and Family Services (DCFS) on March 5, 2018, when the child was three-and-a-half years old. Father was on probation, and when the probation officers conducted an unannounced probation check, they found mother and father in the house with Ivy. Both parents appeared to be under the influence.[2] DCFS was called.

A DCFS social worker met the probation officer outside the house. The probation officer informed the social worker that there was a marijuana-like smell coming from a car parked

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[1] All further references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Father was on probation for possession of illegal weapons and ammunition. He was not in violation of his probation.

outside the residence. The social worker agreed that there was a heavy marijuana-like smell coming from the car. She also observed a child's car seat in the back seat of the car, and marijuana-like residue in the middle compartment between the front seats. In addition, probation had found a pipe in mother's purse, accessible to the child inside the house. The pipe appeared to have marijuana residue in it.

The social worker spoke with mother. Mother first denied that the car was hers, formulating a convoluted story that the car belonged to the child's maternal grandfather and the car seat belonged to her cousin, while Ivy's actual car seat was locked somewhere which could not presently be accessed. She also claimed that maternal grandfather used marijuana in the car. Mother admitted that she had previously used marijuana daily, but claimed to have decreased her usage to weekends only. She said she last used that morning at 8:00 a.m. When the social worker pointed out that it was, in fact, a weekday, mother shrugged and said that she slipped. Mother said that she smokes in front of the house and away from the child, who is cared for by maternal grandfather while mother smokes. When the social worker asked how this could be, given that mother had said maternal grandfather also used marijuana, mother admitted that she had been lying. She and father did use the car; the car seat was Ivy's. Maternal grandfather did not use marijuana; mother and father smoked marijuana inside the car " 'as they hot box it together.' " As to mother's use that morning, she conceded maternal grandfather was not home to watch the child, and she left Ivy and father asleep in the house when she went outside to smoke. When asked if she knew whether father was under the

influence, mother said she did not know, as they did not smoke together that morning.

The social worker then spoke with father, who claimed he did not understand her. He "appeared to be under the influence of a substance as his eyes appeared blood shot and pupils were dilated." He claimed that he did not know he was on probation and did not understand why probation officers were at his house. When the social worker tried to explain why she was there, father again claimed not to understand, and said he preferred if the social worker explained it to him in Mandarin.[3] He laughed. When the social worker said this was a serious matter and father's cooperation would be appreciated, he said he did not need to talk to her.

When asked, mother agreed to perform an on-demand drug test the next day. She told the social worker that it should come back positive for marijuana, but nothing else. The social worker informed her that a missed test could be considered positive; she said she understood. When asked if he would drug test, father answered, " 'sure whatever's, I don't care.' "

2. *Both Parents Fail to Drug Test*

The following day, March 6, 2018, the social worker texted mother the address and hours of the drug testing location. The parents did not go.

On March 8, 2018, the social worker called mother and asked if both parents had been able to test. Mother claimed she had lost her phone after she had met with the social worker on March 5, and was therefore unable to contact the social worker. She said she had obtained a new phone with the same number on

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[3] Father is of Mexican-American descent, born and raised in Los Angeles.

March 7. The social worker asked if she would test that day, March 8. Mother asked if it was mandatory. The social worker said it was voluntary, but was being requested due to the marijuana smell coming from the car. Mother said she would test that day, but father had to work and could not do so.

The parents did not drug test on March 8, either. On March 14, mother claimed that she had not tested because " 'her mother got her a side hustle (job) to get extra cash' " and she forgot about the drug test. She told the social worker that she was willing to drug test that day " 'for real this time so she can prove that she was really not using anything.' " The social worker told her that this would no longer be an on-demand test. Mother claimed that she had stopped using marijuana on March 5, when the social worker had come to her home.

3. *The Petition is Filed and Ivy is Detained*

On March 19, 2018, DCFS filed a petition alleging that Ivy was dependent under section 300, subdivision (b)(1) based on the parents' current abuse of marijuana, which rendered them incapable of providing regular care and supervision of Ivy.

A detention hearing was held on March 20, 2018. Mother appeared; father did not. Mother argued against detaining Ivy. Her counsel explained that maternal grandparents and other responsible adults lived in the house and could protect Ivy. Counsel also represented that mother was now taking the allegations seriously; she had enrolled in parenting classes and "she's now willing to test for the Department. She does understand the severity of the situation and will not miss any tests."

The court acknowledged that the case was not an easy one, but ultimately detained Ivy. The court was concerned by what

appeared to be "pretty heavy use of marijuana" by parents and a series of no-show drug tests. The court found a prima facie case established. The court impressed upon mother how critical it was that she test, and indicated that it would consider releasing Ivy to her at the next hearing, on April 3.

4. *Mother Participates in Services and Testing; Father Does Not*

In the next two weeks, mother did, in fact, began taking the proceedings seriously. In addition to her enrollment in parenting classes, mother also enrolled in individual counseling and random drug testing. She tested positive for cannabinoids on March 21.

The DCFS social worker's report for the April 3 hearing indicated that mother admitted that she had been "smoking marijuana regularly but stopped the day child Ivy was detained (3/20/18). The mother stated she has been clean since." She claimed that this was a wake-up call for her and she will not smoke again. Mother also said father smoked marijuana. Mother apologized for not testing when she had first agreed to do so; she said she would have tested if she knew what was going to happen. Mother said that maternal grandparents were aware that mother and father smoked marijuana and had lectured them about it, trying to make them stop. Mother denied ever smoking in the home or in the presence of Ivy; she said the child was well cared for.

Father refused to have any contact with DCFS, and did not test. Mother agreed to separate from father if Ivy was returned to her custody.

5. *The Pretrial Release Investigation Hearing*

Mother appeared at the pretrial release investigation hearing on April 3; father had been at the courthouse earlier, but did not appear at the hearing. The court gave DCFS discretion to release Ivy to mother if father moved out of the home.

6. *Father Moves Out; Ivy is Released to Mother*

On April 4, 2018, father moved out of the home. On April 9, 2018, DCFS released Ivy to mother in the home shared with maternal grandparents.

7. *Interviews and Drug Testing Prior to Adjudication Hearing*

The social worker interviewed mother, father, and maternal grandparents. They all agreed mother and father had used marijuana; but also all claimed that Ivy was never at risk from it. Father, in particular, admitted that there had been a pipe in mother's purse the day of the probation search, but claimed the purse had been high on a dresser where Ivy could not reach it.

Ivy was also interviewed. She did not know anything about drug use, but when asked about smoking, she said, " 'They blaze it up.' " When asked who would "blaze it up," she identified her parents and pointed outside the window.

Mother continued to drug test. She missed a few tests, but, overall, her cannabinoid levels decreased down to the point where she tested negative. Father missed all of his drug tests. The jurisdiction hearing was originally set for May 7, 2018. Both parents attended, and all parties asked for a two or three week continuance so that father could drug test. The court agreed and continued the hearing to May 23.

Father was directed to randomly test on May 10; he missed the test. He did not enroll in any programs and was not in

contact with the DCFS social worker. Mother had an additional negative test and an additional missed test.

8. *The Adjudication/Disposition Hearing*

The adjudication/disposition hearing was held on May 23, 2018. Neither parent attended. No additional evidence was introduced. Counsel for both parents argued against jurisdiction, arguing there was no nexus between the parents' marijuana usage and any risk of harm to Ivy.

The court adjudicated Ivy dependent. The court concluded that mother and father were heavy, regular users of marijuana, and it was more likely than not that the parents were under the influence when caring for her. Given that Ivy was a child of tender years, the court concluded the parents' heavy marijuana use placed the child at risk. Turning to disposition, the court found that it was necessary to remove Ivy from her father based on his lack of cooperation and multiple missed drug tests.

9. *Notices of Appeal and Subsequent Proceedings*

On May 23, 2018, mother and father each filed notices of appeal. On November 30, 2018, the court terminated jurisdiction with a juvenile court custody order awarding joint legal custody, and physical custody to mother with father to have monitored visitation.[4] In light of the termination of jurisdiction, we asked mother and DCFS to brief whether mother's appeal should be dismissed as moot.

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[4] After informing mother and DCFS of our intention to do so, and receiving no objection, we take judicial notice of the subsequent orders of the juvenile court.

DISCUSSION

1. *Mother's Appeal is Moot*

When, pending an appeal, without fault of the respondent, an event occurs which renders it impossible for the court, if it decides the case in favor of appellant, to grant any effectual relief, the appeal becomes moot. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316.) As the dependency court no longer has jurisdiction over Ivy and her custody has been returned to mother, there is no relief we could grant mother. Her appeal is therefore moot.

Mother argues that we should consider her appeal regardless of its mootness, because the adjudication of dependency with respect to mother creates the possibility of prejudice to mother in subsequent family law or dependency matters, and because the dismissal of the appeal operates as an affirmance of the underlying judgment. (See *In re C.V.* (2017) 15 Cal.App.5th 566, 571.) Mother does not suggest any tangible way in which the court's brief jurisdiction over her child, which prompted her to discontinue drug use and become a more responsible parent, will prejudice her in the future. We decline to exercise our discretion to consider her appeal.

2. *Substantial Evidence Supported the Adjudication of Dependency*

Turning to father's appeal, the dependency court found Ivy dependent under section 300, subdivision (b)(1). That subdivision provides, in pertinent part, that a child may be declared dependent if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's . . .

substance abuse." The finding of dependency cannot be based on substance abuse alone; jurisdiction requires a substantial risk of harm to the child. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 453.)

"Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child currently needs the court's protection. [Citation.] A parent's ' "[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue.' [Citations.]" (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1384.)

" 'We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.] "However, substantial evidence is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, '[w]hile substantial evidence may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence" [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].' [Citation.] 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" [Citation.]' " (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

On appeal, father argues there was no substantial evidence that (1) he had a substance abuse problem; and (2) such problem caused a risk of harm to Ivy.[5]

A. *Substantial Evidence of Substance Abuse*

Case law acknowledges that there is a difference between substance abuse and mere use. (*In re Drake M., supra,* 211 Cal.App.4th at p. 764.) Father argues that he is a legal recreational user of marijuana, but the evidence demonstrates he clearly used marijuana prior to decriminalization under California law. Indeed, his criminal history reveals arrests in 2009 for possession of concentrated cannabis. Prior illegal use supports a finding of a history of substance abuse. (*In re Alexis G., supra,* 171 Cal.App.4th at p. 451.) There is no evidence that any prior substance abuse issues father had were resolved. In fact, all evidence is that he continued heavily using marijuana despite the pleas of his in-laws. When ordered to test, he was noncompliant.

B. *Substantial Evidence of Risk of Harm*

At least one prior Court of Appeal opinion involved circumstances where a parent used marijuana but was never under the influence around the child and the child was never exposed to marijuana. (*In re Drake M., supra,* 211 Cal.App.4th at p. 761 [father ensured that at least four hours passed between when he smoked and when he picked the child up after work, he did not feel the effects of marijuana when he picked up the child, and he kept the marijuana in a locked tool box on a shelf in a

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[5] The juvenile court's order terminating jurisdiction did not render father's appeal moot. That order denied father physical custody in favor of visitation based on the findings made in the dependency proceeding.

detached garage out of the child's reach].) This, however, is not such a case.

Ivy's car seat was in a car reeking of marijuana. (*In re Alexis E., supra,* 171 Cal.App.4th at p. 452 [finding a risk to the children via exposure to secondhand marijuana smoke].) There was a pipe with marijuana residue in a purse on a dresser in the house, accessible to Ivy. Although father argues the pipe was too high for Ivy to reach, the trial court could reasonably have found otherwise. " 'Concealing an item in a bag would not deter a normal four-year-old from seeking to find out the contents of that bag. In addition, the average four-year-old can reach a shelf that is only four feet from the floor, and is capable of scooting a chair over and climbing up on it to reach items placed up high.' [Citation.]" (*In re C.V., supra,* 15 Cal.App.5th at p. 572.) There is nothing in the record suggesting that Ivy's development was such that she could not have reached the purse.

Most importantly, on March 5, father was under the influence while in the house with three-and-a-half-year-old Ivy. When a child is of tender years, the absence of adequate supervision and care poses an inherent risk to the child's health and safety. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1220.) This is not a case where the parent made an effort to shield his child from himself when he was under the influence. At most, father shielded Ivy from his actual act of smoking marijuana by smoking outside the home, but father had young Ivy in his care while he was under the influence of marijuana. That constitutes direct evidence of a risk of harm.

3. *Substantial Evidence Supported the Disposition Order Removing Ivy From Father's Custody*

After an adjudication of dependency, a "dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . . [¶] There is or would be a substantial danger to the health, safety, protection or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (Welf. & Inst. Code, § 361, subd. (c)(1).) We review the juvenile court's dispositional finding for substantial evidence. (*In re Christopher R., supra,* 225 Cal.App.4th at p. 1216, fn. 4.)

Substantial evidence supports removal of Ivy from father's custody. Father's marijuana use presented a substantial danger to Ivy, as he failed to protect her from secondhand smoke, access to the pipe, and himself, when he was under the influence. He refused to participate in any services, and missed every drug test he was asked to take. In short, Father had an unresolved substance abuse problem which he allowed to impact his parenting. Removal was well supported.

DISPOSITION

Mother's appeal is dismissed; the jurisdiction and disposition orders are affirmed as to father.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.